

able and meritorious consideration, assign the same to William Stewart, as expressed in the assignment, and the clerk of the Court of Appeals, according to the directions of the assignors, entered the case for his use. Afterwards, on the 14th of January, 1836, the same cause was marked for Stewart's use in the Chancery Court. This was the state of the case when the Court of Appeals, at December term, 1837, remanded the cause to the Court of Chancery for the purpose of amendment by making a new party and taking further proof, and because the use to Stewart was not marked on the docket, when and since the amended bill was filed in 1838, it is alleged that Stewart has been guilty of such laches and neglect as will induce a Court of Chancery to deprive him of his security.

I cannot bring myself to think so. He had done everything which could be required of the most cautious and prudent man. He had caused the interest he had in the suit to be exhibited in both courts, and if from the great number of docket entries it was not convenient to enter the use to him when the amended bill was filed, this surely should not impair his right. It was the act of the clerk and not his act.

Certainly a party who has obtained the assignment of a suit or decree has done everything which can reasonably be required of him when he has caused the entry to his use to be made. To insist that he must not only do this, but that he shall likewise see whenever the cause is transferred from docket to docket, that the entry to his use is duly copied, would, in my judgment, be imposing a very great hardship upon him. It is a requisition which I could not be induced to insist upon unless impelled by considerations much more stringent than exist in this case. Mr. Darnall, the rival claimant, did not take an assignment of this claim in 1841 or 1845 for moneys advanced and paid at the time, but to secure a pre-existing debt, as clearly appears by his answer to the petition of General Stewart. He states, to be sure, that during the period he was making such advances for the support of Hall, his wife and his family, "he did so under the promise and with the full belief that the same would be paid to him out of the sums of money which they might recover